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MUSIC ZONE,)
)
Plaintiff,)
-vs-) NO. 02-0472
) (cons.)
PEOPLES GAS LIGHT & COKE) 02-0524
COMPANY,)
)
Defendant.)

COMPLAINANT MUSIC ZONE'S OPENING BRIEF

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COMPLAINANT'S OPENING BRIEF

NOW COMES the Complainant, MUSIC ZONE, by and through its attorney, ROBERT HABIB, and propounds this Opening Brief:

INTRODUCTION

The complainant, Music Zone has a facility at 2444 W. 16th St., Chicago, Illinois, where it maintains rooms which it rents to bands wishing to rehearse, and practice in its rooms (p. 121). There are 18 rooms on the 2nd floor. There are 44 rooms on the 3rd floor. Music Zone has no cooking facilities, and it uses natural gas solely for heat (p. 122). It's manager, Joe Hibbs, testified to controlling the heat on each floor through a thermostat, with the heat usually kept at 68 degrees.

Music Zone has two accounts for natural gas with Peoples Gas. For the 2nd floor, the account number is 8500018410993. For the 3rd floor the account number is 85000184110.

Music Zone had filed separate complaints for the 2nd floor, and 3rd floor accounts. The two floors had different meters, while the 2nd floor account had been the subject of a formal Complaint brought by Music Zone against Peoples Gas in 2001 (p. 122).

Different issues arose as to the Complaint filed by the 2nd floor account as distinct from the 3rd floor account. Nevertheless, it should be noted that the same witnesses, Joe Hibbs for Music Zone, Kay Staley for Peoples Gas testified at the hearing as to both accounts.

SUMMARY OF ARGUMENT

Second Floor

The revised bill issued by Peoples Gas on March 12, 2002 was in violation of the Settlement Agreement entered in Case #01-0326, in that it attempted to bill Music Zone for the period covered by the Settlement Agreement.

The March 12, 2002 bill was also inaccurate in that it claimed \$4,042.05 was owed for January, 2002, where Peoples Gas conceded at the hearing, that the bills should have been cancelled.

Peoples Gas further violated Section 280.080, Title 83 of the Illinois Administrative Code by sending Music Zone estimated bills for more than 15 consecutive billing periods.

Respondent also violated Section 280.100, Title 83 of the Illinois Administrative Code by not providing Music Zone with notice that it had 16 months to pay the revised bill, and by assessing late fees, and additional security deposit charges.

Finally, respondent utterly failed to establish that Complainant owed \$13,105.00 in disputed bills.

Therefore, the appropriate relief is to strike the \$13,105.00 from Music Zone's account.

Second Floor Account

Findings of Fact

The evidence produced at the hearing, consisting of testimony of Joseph Hibbs, Kay Staley, and the exhibits entered into evidence showed the following facts:

1. Music Zone had previously filed a Complaint with the Illinois Commerce Commission against Peoples Gas, Complaint #01-0326, claiming it was being over billed (p. 122). This case was settled August 1, 2001, when attorney, Robert Habib, on behalf of Music Zone (Complaint Exh. 1), and attorney, Peter Brgida, on behalf of Peoples Gas (Complaint Exh. 2), executed a Stipulation, and Motion to Dismiss, pursuant to the Settlement Agreement. The settlement involved the issuance by Peoples Gas, on 7/31/01 of a new bill, canceling \$5,677.47 in billing what the respondent previously claimed was owed. See Complainant Exh. 3, giving Complainant a zero balance as of July 31, 2001 (p. 132). Finally, Peoples Gas had refunded \$2,100.00 as to Complaint (p. 123). See Complainant's Exh. 4, (the formal Complaint to which is attached the Settlement Agreement, dated August 1, 2002).

2. On March 12, 2002, Peoples Gas issued a bill which showed a previous balance owed of \$4,042.05, as for services between January and February, 2002, late payments

charges of \$236.47, a cancellation of prior billing from 10/17/00 to 2/24/02, in the amount of \$10,849.21, and a revised prior billing of \$13,984.87 for the same period. As a result of the rebilling, Music Zone owed \$3,155.66 extra, combined with the \$4,042.05 owed on the January bill, plus the late charges, which came to a total of \$6,941.00 never previously shown as due and owing (p. 134, 139).

3. The Complainant argued the \$4,042.05 for January, 2002 was clearly incorrect, producing as a Group Complainant's Exhibit 5, which were all the bills complainant received from respondent between December 5, 2003 and March 9, 2001 (p. 135).

4. As highlighted in a graph Complainant produced, Complainant's Exhibit 6 (p. 140), the contrast between complainant's bills for gas usage for January, 2002 as compared to the prior year and succeeding years, January, 2003 were shocking (p. 140):

January, 2000	-	\$1,027.67
January, 2001	-	\$2,561.51
January, 2002	-	\$4,042.05
January, 2003	-	\$1,453.76

No difference in temperature for these months could account for the difference (p. 141-144).

5. As to the revised billing, Peoples Gas had rebilled Music Zone for the period from October 17, 2000 to

February, 2002, and this included nine months from October, 2000 to August, 2001, expressly covered by the Settlement in Case #01-0326, wherein Peoples Gas had issued a bill on July 31, 2001, showing cancellation of all existing charges prior to that date, and giving Music Zone a zero balance as of July 31, 2001 (p. 134, 132).

6. Peoples Gas issued estimated bills to Music Zone for the entire period from October, 2002 to February, 2003. Peoples Gas claims that the revised billing issued in the March, 2002 bill was because it had only been able to do actual readings in October, 2000, and February, 2002 (p. 222, 223).

7. However, Peoples Gas was incorrect on this claim. It's own Exhibit, Respondent's Exh. E, showed an actual reading to have occurred on July 26, 2001, at the time it issued the zero bill to complainant, and cancelled all previous charges.

8. Section 280.080, Title 83 of the Illinois Administrative Code, which pertains to regulations of public utilities, requires Peoples Gas to do an actual meter reading at least every second month period, unless the procedure used by the utility to calculate the estimated bill has been approved by the Commission, or the customer has made an actual meter reading difficult.

9. In this case, the complainant, Joseph Hibbs,

testified he has always been available on the property to allow for Peoples Gas representatives to read the meter (p. 153).

10. However, Peoples Gas was unable to show compliance with Section 280.080 as it did not show that:

- A) it used a procedure for estimating approved by the Commission;
- B) it had or attempted to read the meter, and had been unable due to lack of cooperation from Music Zone to do so.

11. Section 200.100 provides that when a rebilling does take place, the utilities have to give its customer the same amount of time to pay for the unbilled service as the period for which the unbilled service had occurred.

In the case of the March, 2002 bill, assuming it was correct, this would have been 16 months.

12. However, as testified by Joseph Hibbs, Music Zone was specifically threatened by Peoples Gas with disconnection (Complaint Exhibit 8, p. 145). No notice was given by Peoples Gas that the complainant, pursuant to Section 280-100 was entitled to 16 months to pay the amounts for unbilled service set forth in the March, 2002 bill.

13. The respondent, proceeded to charge Music Zone with \$1,301.02 in late fees from March 12, 2002 to April 7, 2003, when Music Zone protested, and failed to pay the March, 2002 bills (p. 146). Respondent also insisted on

collecting the \$1,360.00 in additional deposit installments, when Music Zone protested the bill (p. 151).

14. The rebuttal evidence produced by Peoples gas were confusing and contradicting.

Respondent did not produce any evidence to rebut or contradict the testimony of Joseph Hibbs, along with Exhibits 1,2,3, & 4, and that the Settlement in complaint #0-0326 was meant to cover all bills up to July 31, 2001.

15. Respondent did not produce any evidence as to why it had not complied with Section 280.080, and not given complainant an actual reading every other billing period.

16. Respondent did not produce any evidence of its compliance with Section 280.100, that it offered complainant a payment plan which would have stretched for 16 months. Instead its threats of disconnection, unless immediate payment was made, and its regular billing of Music Zone as to its \$1,301.00 in late charges, do not show compliance with Section 280.100.

17. Respondent's evidence as to the March, 2002 bill was also extremely contradicting, and confusing. Peoples Gas's witness, Kay Staley, produced a Respondent's Exhibit E, a check prepared by her as to Music Zone's account from 12/22/99 to December 5, 2003. This exhibit was supposedly prepared to demonstrate the method used by Peoples Gas in correcting, holding that Complainant owed \$13,429.63 on the

2nd Floor account.

18. However, Exhibit E had serious inaccuracies which the respondent was unable to explain. The witness, Ms. Staley, testified all complainant's bills between October 17, 2000 and February 4, 2002 had been cancelled, and recalculated (p. 257). This would have included the \$4,042.05 bill for the month of January, 2002 received by complainant on February 12, 2002. However, the February 12, 2002 bill (for the period from 1/08/02 to 2/04/02 when recalculated by Peoples Gas, now came to \$706.67, as compared to \$4,042.05 (p. 258).

Nevertheless, Ms. Staley insisted on starting out her recalculation from October, 2000, showing complainant began that month owing a balance of \$4,042.05 (p. 271).

19. Respondent's records, and calculations, as shown by Exhibit E, and Ms. Staley's own testimony appeared to be partially incorrect.

20. Furthermore, Peoples Gas provided no justification whatsoever for its subsequent re-billing of complaint in March, 2003 for an additional \$3,715.66.

21. Finally, Ms. Staley, Peoples Gas representative, was unable to answer complainant's repeated questioning as to how it owed \$13,429.63 as of December, 2003 (p. 263-265).

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter.

2. It is the policy of the courts of Illinois to encourage compromises and settlements of litigation, and to construe and enforce them in the courts in which they are entered, W.R. Grace & Co. v. Beker Industries, 128 Ill. App3d. 215, 470 N.E. 2d 577 (1st Dist. 1984). The ordinary rules of contract construction apply to settlement agreements, and valid assent to the terms of the agreement may be inferred from the conduct of the parties. Northern Trust Co. v. Brentwood North Nursing & Rehabilitation Center, Inc., 225 Ill. App3d. 1039, 588 N.E. 2d 467 (2nd Dist. 1992).

3. In the instant case the settlement entered into for case number 01-0326 is shown by the execution of the Settlement Agreement on March 1, 2001, by which PEOPLES GAS refunded TWO THOUSAND, ONE HUNDRED (\$2,100.00) to MUSIC ZONE, Complainant Exhibit Number 4, (last page) and PEOPLES GAS' canceling FIVE THOUSAND, SIX HUNDRED SEVENTY-SEVEN AND 47/100's (\$5,677.47) in previous bills on July 31, 2001. Complainant's Exhibit Number 3. This conduct by the parties clearly shows the Settlement was to cover the period up to July 31, 2001.

4. PEOPLES GAS violated the settlement by issuing the revised bill dated March 12, 2002, canceling TEN THOUSAND, EIGHT HUNDRED FORTY-NINE AND 21/100'S (\$10,849.21) in prior billing from October 17, 2000 to February 4, 2002 and issuing new billing for THIRTEEN THOUSAND, NINE HUNDRED EIGHTY-FOUR AND 87/100's (\$13,984.87) for the same period. PEOPLES GAS had no right to issue any revised bills for the period prior to July 31, 2001, as said period was covered by the prior settlement.

6. Furthermore, respondent's March 12, 2002 bill which included FOUR THOUSAND, FORTY-TWO AND 05/100's owed from January, 2002 was clearly erroneous in that;

- A) The estimated bill for February 12, 2002 was dramatically higher than all previous estimated bills issued by respondent for January as shown by Complainant, Exhibit 6.
- B) PEOPLES GAS by MS. STALEY'S testimony and its Exhibit E, cancelled the FOUR THOUSAND FORTY-TWO AND 05/100's (\$4,042.05), showed as owed on February 12, 2002 and replaced it with another estimated bill for SEVEN HUNDRED SIX AND 67/100's (\$706.67).

7. PEOPLES GAS acted in violation of Section 280-080, Title 83, Illinois Administrative Code by giving MUSIC ZONE estimated bills repeatedly for more than fifteen (15) consecutive billing periods.

8. PEOPLES GAS violated Section 280-100 by failing to offer MUSIC ZONE at least sixteen (16) months to pay the

revising billing shown on the March 12, 2002 bill, assuming the revised billing was actually correct. Instead it threatened complainant with disconnection.

9. PEOPLES GAS further violated Section 280.100 by levying late fees for MUSIC ZONE'S alleged failure to pay the March 12, 2002 bill in the amount of ONE THOUSAND, THREE HUNDRED ONE AND 02/100's (\$1,301.02) from March 12, 2002 to April 7, 2003. It further violated Section 280-100 by collecting ONE THOUSAND, THREE HUNDRED SIXTY (\$1,360.00) in additional deposit installments.

10. The Commission therefore finds that given the respondent's violation of the Settlement Agreement, its violations of Section 280.100 and Section 280.080 and respondent's own admissions as to the inaccuracy of its bills, (see Respondent's Exhibit E), the entire amount of THIRTEEN THOUSAND, FOUR HUNDRED TWENTY-NINE AND 63/100's (\$13,429.63) should be removed from MUSIC ZONE'S account.



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SUMMARY OF ARGUMENT

Third Floor

The revised bill received by the Complainant, Music Zone, on March 12, 2002 from respondent, Peoples Gas, claiming an additional \$7,490.00 was owed for unbilled service from September, 2000 to February, 2002, was inaccurate, and should be stricken from Complainant's account.

The dramatic increase in the size of the bill, as compared to earlier periods, along with the inaccuracy of the meter, which upon removal tested "FAST", demonstrated the untrustworthiness of the bill.

Furthermore, respondent violated Section 280.080, Title 83 of the Illinois Administrative Code by sending complainant estimated bills for 17 months.

Finally, respondent also violated Section 280.100, Title 83, of the Illinois Administrative Code by failing to inform the complainant it had 17 months to pay the revised bill, threatening complainant with disconnection, and assessing late fees against the Complainant.

Because of the Respondent's violations of Section 280.080, and Section 280.100, along with the lack of trustworthiness of the March 12, 2002 bill in the amount of \$8,593.49 should be stricken from Complainant's account.

THIRD FLOOR ACCOUNT

Findings of Fact

1. That the complainant, MUSIC ZONE, from 200 onwards maintained 44 rooms for bands to practice, and rehearse their music (p. 122).
2. That the Complainant used natural gas from the respondent solely for heating purposes (p. 122).
3. That according to Peoples Gas, witness, Kay Staley, a graph, prepared September 21, 2002, service was first provided complainant on 12/29/99 with the meter set at 75063 cubic feet (Respondent's Exh. G).
4. That on September 16, 2000, an actual reading of the meter was done showing the meter at 75,697 cubic feet (Respondent's Exh. C).
5. According to Respondent, MUSIC ZONE, for the ninth month period from 12/28/99 to 9/26/00, used 635 cubic ft. of gas (Respondent's Exh. G).
6. That as set forth in Respondent's Exhibit , the next actual reading was done February 18, 2002 which resulted in a reading of 84395 cubic feet.
7. Therefore, in the 17 month period from 9/26/00 to 2/18/02, complainant supposedly used 8698 cubic ft. which represented an increase of over 700% in usage from the comparable period from 12/29/99 to 9/26/00 (Respondent's Exh. G).

8. On March 12, 2002 Peoples Gas issued a bill to complainant which provided as follows:

Cancelled 9/20/00 - 2/02/02 \$ 902.70

Revised 7/26/00 - 2/02/00 \$8,106.52

This represented an amount due of \$7,490.67 (p. 162, 163).

9. That Section 280.080 requires the public utility to do an actual reading every second billing period, rather than relying on estimated billings.

10. That the two exceptions set forth in Section 280.080's requirement as to actual billing are: 1) that the public utility in using a method to estimate approval by the Commission; or when the customer prevents or makes difficulty for the utility's attempt to read the meter.

11. That the Complainant's witness, Joe Hibbs, building manager for Music Zone, testified that at no time did he prevent Peoples Gas employees from reading the meter nor was he ever contacted by Peoples Gas representatives to read the meter (p. 168, 169).

12. That no evidence was produced by Peoples Gas as to either it using a method approved by the Commission for estimated bills. Furthermore, respondent did not produce any evidence as to any attempts to read the meter between September, 2000, and February, 2002 which were frustrated or prevented by Complainant.

13. That upon receipt of the March, 2002 bill, the complainant protested to Peoples Gas, and to the Commerce Commission that there was no basis for the revised bill showing Music Zone to owe \$7,490.00 over the 17 month period (p. 166 Complainant's Exh. 9).

14. That upon complainant's protesting, and refusing to pay the bill, complainant was threatened with disconnection (p. 166 Complainant's Exh. 10).

15. That Section 280.100 provides that when a utility rebills for unbilled service, the customer has to be given the same period of time to pay the revised bill as the time the bill occurred. Therefore, as the March , 2002 revised bill was for a 17 month period between September, 200, and February, 2003, the complainant had to be given 17 months to repay the bill, assuming the bill's accuracy.

16. That when the Complainant protested the bill, the Respondent proceeded to assess \$1,630.65 in late charges (p. 170).

17. That the meter involved from 1999 to May 1, 2002 was meter #P1909029. That the Equipment Maintenance Report, admitted into evidence as Complainant's Cross-Exhibit 1, showed that the meter #P1909029, after its removal on May 1, 2002, was tested, and found to be "FAST" (p. 308-314).

CONCLUSIONS OF LAW

1. That the Court has jurisdiction over the parties, and the subject matter.

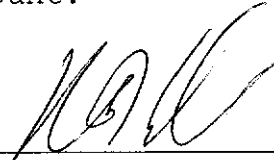
2. That the Respondent, Peoples Gas, violated Section 280.080 from September, 2000 through March, 2002, by continually providing complainant with estimated bills.

3. That the respondent, Peoples Gas, violated Section 280.100 by issuing the March, 2002 demanding immediate payment of the \$7,470.67 for unbilled services from September, 2000 to February, 2002, yet it had at least 17 months to repay the revised bill.

4. That Respondent further violated Section 280.100 by charging complainant \$1,603.00 in late fees for failure to pay the March, 2002 revised bill immediately.

5. That given the huge discrepancy between the actual readings conducted in December, 1999, September, 2000, and February, 2002, which showed a 700% increase in usage by complainant, along with the fact that the meter #P1909029, upon its removal on May 1, 2002, tested "FAST", the Court finds the March, 2002 bill to be inaccurate.

6. That the disputed amount of \$8,503.49 is to be stricken from Music Zone's account.



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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

MUSIC ZONE,)	
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Plaintiff,)	
-vs-)	NO. 02-0472
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PEOPLES GAS LIGHT & COKE)	02-0524
COMPANY,)	
)	
Defendant.)	

NOTICE OF FILING

TO: Hon. Leslie Haynes Illinois Commerce Commission 160 N. LaSalle St., Ste. C-800 Chicago, IL 60601-3104	Brett J. Beattie Mcguire Woods, LLP 77 W. Wacker Dr., Ste. 4400 Chicago, IL 60601
Katherine A. Donofrio People Gas Light & Coke Co. 130 E. Randolph Dr. Chicago, IL 60601	

TAKE NOTICE that, on the 18th day of February 2004, the Complainant filed the attached Motion with the Clerk of the Illinois Commerce Commission, by mailing same to 527 East Capitol Ave., P.O. Box 19280, Springfield, Illinois 62701.

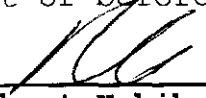


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CERTIFICATE OF SERVICE

I, Robert Habib, hereby certify that a copy of this notice and a copy of the Motion were served on the above named by depositing same in the U.S. Post office box at 77 W. Washington St. Chicago, Illinois, addressed as above, on the 18 day of February 2004 at or before the hour of 5:00 p.m.



Robert Habib